

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
ETC Annual Reports and	)	WC Docket No. 14-58
Certifications	)	
	)	

**PETITION OF TATUM TELEPHONE COMPANY, INC. FOR LIMITED WAIVER OF  
SECTION 54.313(f)(2)(ii)**

---

COMES NOW Tatum Telephone Company, Inc. (the “Tatum”) (Study Area Code 442150) pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules<sup>1</sup> to request a limited waiver of the requirement specified in Section 54.313(f)(2)(ii).<sup>2</sup> This rule requires privately held rate-of-return carriers that are not recipients of loans from the Rural Utilities Service (“RUS”) whose financial statements are audited in the ordinary course of business to file a copy of their audited financial statements with their eligible telecommunications carrier (“ETC”) Annual Report (otherwise known as the “Form 481”).<sup>3</sup> Tatum would show as follows:

**I. Introduction**

On or about September 25, 2018, Hilliary Acquisition Corp, Texas, LLC (“HACT”) entered into a Stock Purchase Agreement with Townes Tele-Communications, Inc. to purchase Tatum.<sup>4</sup> The purchase price was paid and the transaction was closed on December 30, 2019. Since that time, Tatum, under new

---

<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 54.313(f)(2)(ii).

<sup>3</sup> *Id.* Alternatively, the carrier may file “a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit.”

<sup>4</sup> *Domestic Section 214 Applications Filed for the Transfer of Control of Tatum Telephone Company, Inc. and Electra Telephone Company, Inc. to Hilliary Acquisition Corp. Texas, LLC*, WC Docket Nos. 18-301 and 18-302, Public Notice, 33 FCC Rcd 10108 (2018).

ownership, has worked diligently to complete all regulatory approvals and obtain all information necessary to complete all regulatory filings moving forward, including the Form 481. With the exception of the audited financial statements, for which a limited waiver is sought herein, Tatum is timely filing its Form 481. Alternatively, Tatum is providing unaudited financial statements as a part of the Form 481 filing that it will supplement as soon as the audited statements become available. This request is not based merely on the delay of a third-party under control of Tatum; rather, it is based in special circumstances beyond Tatum's control that are preventing it from filing full audited financial statements by the deadline.

## **II. Waiver Request and Good Cause**

Generally, the Commission's rules may be waived for good cause shown.<sup>5</sup> Furthermore, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>6</sup> The FCC has also previously granted similar limited waivers when the ETC had "demonstrated special circumstances beyond its control that preclude[d] it from filing a full and complete audited financial statement by the ... deadline."<sup>7</sup>

Here, Tatum can show special circumstances beyond its control such that a requirement of strict compliance would be inconsistent with the public interest. Specifically, Tatum has yet to receive the necessary documentation from the prior owners to satisfy various financial, audit, and tax reporting obligations. HACT was assured as a part of the purchase agreement with sellers as follows:

**5.5 Further Assurances.** Each Party agrees to take such further actions and execute and deliver such further documents after the Closing Date as may reasonably be requested by any other Party to (a) vest more fully in the Buyer all right, title, and interest in into the Shares (b) vest more fully in the Shareholder all right, title, and interest in into the Excluded Assets and (c) otherwise consummate or perfect the transactions contemplated hereby. Furthermore, from an after the closing date, each party shall cooperate fully as in to the extent reasonably requested by any other party, and at the expense of such other party, in connection with any third-party litigation, tax audit, or other proceeding or matter relating to events occurring or circumstances existing prior to the closing date.

---

<sup>5</sup> 47 C.F.R. § 1.3.

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 166(D.C. Cir. 1990) (Northeast Cellular).

<sup>7</sup> *See Connect America Fund*, Order, 30 FCC Rcd 7100,7101, para. 4-5 (WCB 2015)(*Comporium Waiver Order*).

Since the closing date, Tatum under its new ownership has worked diligently to obtain all necessary records and documents to meet financial, audit, and other obligations, but has been unable to do so. Although HACT is the rightful owner of all books and records of Tatum, sellers continue to fail to turn over such documents. Thus, despite numerous and regular phone conferences and e-mails between January 2019 and mid-June 2019, the responses by the sellers to HACT's requests for the books and records of Tatum remain insufficient to meet obligations, including to complete the financial audits. As a result of this continual failure, a lawsuit for breach of contract, has been filed in Comanche County Oklahoma.<sup>8</sup> Specific performance, including delivery of the necessary documentation and books of Tatum, are sought in the lawsuit.

Due to these circumstances beyond its control, Tatum requests a limited waiver of the requirement to provide audited financial statements by the July 1 deadline. Until it receives the necessary documentation from sellers, the audits cannot be completed. Tatum requests a limited 90-day waiver, and is providing draft financial statements with its Form 481. Should the lawsuit to receive the necessary documentation from Sellers not be resolved prior to the expiration of the limited waiver, Tatum would provide the FCC with an update and seek an additional waiver. Such a limited waiver would further the public interest as strict compliance with this rule could result in Tatum having its high cost universal service support reduced on a pro-rata daily basis equivalent to the period of non-compliance,<sup>9</sup> an unjust penalty under the factual circumstances of this case.

### **III. Conclusion**

Tatum respectfully asks for a limited waiver of 90 days from the requirements of Section 54.313(f)(2)(ii). Due to special circumstances beyond its control, Tatum is unable to provide audited financial statements as a part of the Form 481 filing by the July 1, 2019 deadline. Due to the factual circumstances set forth above, the public interest would be served by the granting of a limited waiver, and

---

<sup>8</sup> See *Hilliary Acquisitions Corp. Texas, LLC; Electra Telephone Company, Inc.; and Tatum Telephone Company, Inc.*, Cause No. CJ-2019-381, filed June 28, 2019 in the United States District Court of Comanche County Oklahoma.

<sup>9</sup> See 47. C.F.R. § 54.313(j).

Tatum will update its filing with complete audited financials as soon as available to come into full compliance with the rule.

Respectfully submitted,

Richard, Elder & Gibson, PLLC  
12223 Quaker Avenue (79424)  
P.O. Box 64657  
Lubbock, Texas 79464-4657  
Email: dgibson@regllp.com  
Telephone: (806) 798-8868  
Facsimile: (806) 798-8878

By D. Daniel Gibson  
D. Daniel Gibson  
State Bar No. 24045939

*Attorneys for Tatum Telephone Company, Inc.*